

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PAUL LAUZIER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 952

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The matter of the appeal of Paul Lauzier from that certain order, Docket No. 75-196, wherein Lauzier had applied for a change in point of withdrawal and place of diversion under Permit No. G3-22605P, priority QB-257, from the southwest 1/4 of Section 26, Township 19 north, Range 25 east of the Willamette meridian, for the withdrawal of 1,750 gallons per minute of water from a well 410 feet deep producing 4,000 gallons per minute, located in the northwest 1/4 of the southwest 1/4 of Section 8, Township 19 north, Range 25 east of the Willamette meridian, for the diversion of water from said well to irrigate the northeast 1/4 of

1 Section 7, Township 19 north, Range 25 east of the Willamette meridian,
2 which application was denied by the Department of Ecology (hereinafter
3 referred to as "Department"), the matter having come on regularly for
4 hearing on April 8, 1976, at the office of the Pollution Control
5 Hearings Board in Lacey, Washington; Chris Smith, Chairman, and Board
6 Members Walt Woodward and W. A. Gissberg sitting. The hearing examiner,
7 David Akana, presided.

8 The appellant appeared in person and by and through his attorney,
9 H. K. Dano, and the respondent, Department of Ecology, appeared by and
10 through its attorney, Laura Eckert, Assistant Attorney General. Diane
11 L. Attleson of Seattle, Washington, court reporter, recorded the
12 proceedings.

13 Witnesses were sworn and testified, exhibits were admitted, and
14 counsel made arguments. From the testimony heard, exhibits examined and
15 contentions considered, the Pollution Control Hearings Board makes these

16 FINDINGS OF FACT

17 I

18 The appellant is the owner of land located in Grant County,
19 Washington, in what is commonly referred to as the "Quincy sub-area."
20 A portion of said land consists of land more particularly described
21 as the southwest 1/4 of Section 26, Township 21 north, Range 25 east of
22 the Willamette meridian, Grant County, Washington, the east 1/2 of Section
23 7 and the west 1/2 of Section 8, all in Township 19 north, Range 25 east
24 of the Willamette meridian.

25 II

26 The appellant, since February 2, 1971, has planned and undertaken

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1 to develop for farming the east 1/2 of Section 7 and the west 1/2 of
2 Section 8, Township 19 north, Range 25 east of the Willamette meridian,
3 which described lands are contiguous, from a common well located in the
4 northwest corner of the southwest 1/4 of said Section 8.

5 III

6 On January 8, 1975, the Department, pursuant to RCW 90.44.130,
7 WAC 134 et seq., adopted regulations for the withdrawal of artificially
8 stored ground water, with February 14, 1975, as the deadline for
9 filing applications for the withdrawal of said water, which later was
10 extended because of the Department's workload, to March 17, 1975, but
11 because of adjustments which had to be made in connection with
12 applications, the applications were corrected and adjusted and new
13 applications signed as late as April 3, 1975.

14 IV

15 In order to obtain permits for the use of artificially stored ground
16 water, the appellant was required before the deadline to make application
17 for the development of 5,000 acres of land involving 18 separate
18 applications. He was assisted in the preparation of the applications by
19 Dr. George Maddox, who was then head of the Resource Management Division
20 of the Spokane office of the Department. The procedure followed was that
21 the appellant would bring into the Department's offices legal descriptions
22 on a work sheet with old applications to appropriate public waters.
23 This information was transferred on appellant's general instruction, by
24 a secretary under the directions of Dr. Maddox to new applications for
25 artificially stored ground water. For the purpose of completing this
26 work, the appellant met with Dr. Maddox three times. Two meetings

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1 were in Ephrata and the final one in Spokane, all between the latter
2 part of February and the middle part of March.

3 The applications were prepared on the general instructions of
4 appellant in the Department office and then, during this period of time,
5 were modified because the appellant could develop no more than 5,000
6 acres total, not more than 1,000 acres in one year, and no more than
7 320 acres under any one permit. Separate applications were prepared
8 for the west 1/2 of Section 8, Township 19 north, Range 25 east of the
9 Willamette meridian (G3-22597) and for the northeast 1/4 of Section 7,
10 Township 19 north, Range 25 east of the Willamette meridian.

11 However, the application for the northeast 1/4 of said Section 7
12 was either lost or destroyed by the Department. It was not until
13 April 4, 1975, when the appellant received his permits under said
14 applications that he discovered no permit had been issued for the
15 northeast 1/4 of Section 7, Township 19 north, Range 25 east of the
16 Willamette meridian. He thereupon wrote a letter to Dr. George Maddox,
17 dated April 4, 1975, the same day, advised him of the discrepancy,
18 signed a new application and forwarded it with the letter. The appellant
19 was advised by the Department to apply for a change in point of withdrawal
20 and place of diversion under his Permit G3-22605P, priority QB-257 (which
21 was for the withdrawal and appropriation of water from the southwest 1/4
22 of Section 26, Township 21 north, Range 25 east of the Willamette meridian)
23 for the withdrawal of 1,750 gallons per minute to the 410-foot well
24 located in the northwest 1/4 of the southwest 1/4 of Section 8, Township 19
25 north, Range 25 east of the Willamette meridian, for the diversion and
26 application of water to irrigate the northeast 1/4 of Section 7, Town-

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1 ship 19 north, Range 25 east of the Willamette meridian. He was advised
2 this procedure would then cure the error made by the Department. This
3 procedure was followed by the appellant, but his application for change
4 in point of withdrawal and place of diversion was denied.

5 V

6 That appellant's petition has been amended to conform to the proof.

7 VI

8 Any Finding of Fact which should be deemed a Conclusion of Law is
9 hereby adopted as such.

10 CONCLUSIONS OF LAW

11 I

12 That the instructions given to the appellant to apply for a change
3 in point of withdrawal and a change in the place of use of water under
14 Permit G3-22605P for the purpose of curing the error of the Department
15 in having lost or destroyed the application of the appellant were
16 inconsistent with the position in denying the appellant's application
17 for said change when later submitted.

18 The appellant acted in good faith upon the advice of the Depart-
19 ment in making his application for said change in point of withdrawal
20 and place of use under Permit G3-22605P.

21 The appellant would be injured by permitting the Department to
22 repudiate its recommendations and instructions to the appellant
23 concerning said application for change of point of withdrawal and use
24 under Permit G3-22605P.

25 II

26 The Department is equitably estopped from denying appellant's

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1 application for change in point of withdrawal and place of use under
2 his Permit G3-22605P to prevent a manifest injustice, and the exercise of
3 governmental powers will not be thereby impaired.

4 III

5 Any Conclusion of Law hereinafter stated which may be deemed a
6 Finding of Fact is hereby adopted as such.

7 From these Findings of Fact and Conclusions of Law, the Pollution
8 Control Hearings Board makes and enters this

9 ORDER

10 The Order of DE 75-196 is reversed and remanded to the Department
11 with instruction to grant the application of the appellant for change in
12 point of withdrawal and place of use under Permit G3-22605P, to a 410-
13 foot well located in the northwest 1/4 of the southwest 1/4 of Section
14 Township 19 north, Range 25 east of the Willamette meridian, being the
15 point of withdrawal for use in irrigating 160 acres of land in the north-
16 east 1/4 of Section 7, Township 19 north, Range 25 east of the Willamette
17 meridian, commencing with the year 1976.

18 DATED this 28th day of July, 1976.

19 POLLUTION CONTROL HEARINGS BOARD

20 Chris Smith
21 CHRIS SMITH, Chairman

22 W. A. Gissberg
23 W. A. GISSBERG, Member

24
25
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